



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/168992

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 23, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was held on November 24, 2015, at Oshkosh, Wisconsin. The record was held open for 10 days for the submission of additional evidence by both parties. The agency submitted additional evidence on November 24, 2015. On December 2, 2015, the Petitioner submitted additional evidence. The record closed on December 4, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$133.46 for the period of June 8, 2014 – July 19, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. On January 7, 2014, the Petitioner contacted the agency and reported that her husband KF moved out of the home on December 21, 2013. KF was removed from the Petitioner's case. There is no indication that Petitioner reported at that time that KF's income continued to be deposited into her checking account.
3. On June 24, 2014, the agency issued a Notice of Eligibility for Child Care to the Petitioner informing her that she would receive child care benefits for her children effective May 1, 2014. The notice also informed the Petitioner that if there were any changes in her situation that might affect her eligibility, she was required to report those changes to the agency within 10 calendar days. The notice indicated that her eligibility and benefits were based on earned income of the Petitioner in May, 2014 of \$397.75 and earned income of the Petitioner for June – August, 2014 of \$884.30.
4. On May 2, 2014, the Petitioner completed a SMRF. She reported no changes in household income. She reported no change in her employment at [REDACTED]. She reported new employment at [REDACTED]. She did not report that KF's income was deposited in her checking account.
5. Petitioner's husband KF was incarcerated from July 18, 2014 – October 18, 2014. Petitioner used KF's income to pay household expenses and KF's [REDACTED] fees for this period.
6. On August 28, 2014, the Petitioner completed a SMRF. She reported no changes in household composition. She did not report that KF's earned income was deposited in her checking account.
7. In March, 2015, the agency received an anonymous tip that KF was living with the Petitioner. The agency commenced an investigation.
8. Petitioner's household income for purposes of child care for June, 2014 was \$1,067.86 and for July, 2014 was \$3,395.00. The program gross income limit for adults for June, 2014 for a household of three was \$3,051/month and for July – August 2014 was \$3,298/month for a household of three.

### DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of Wis. Stat. § 49.195(3). Recovery of child care overpayments also is mandated in Wis. Admin. Code, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code § DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change. Wisconsin Shares Child Care Manual (CCM), §1.9.1. The changes that must be reported include a change in monthly income if it increases by at least \$250 or any increase that raises gross income above 200% of the federal poverty level (FPL). Id.

In this case, the agency alleges that the Petitioner failed to report to the agency that she continued to receive KF's income in her checking account that was used to pay household expenses and failed to report when household income exceeded 200% of the FPL. The agency produced documentation of the petitioner's and KF's actual earnings, the overpayment computations, and the notice and worksheets sent to the petitioner fully informing her of the overpayments. The agency found she had income in excess of the reporting requirement and/or 200% of the FPL as noted in Finding of Fact # 8. These computations establish she was overpaid a total of \$133.46, as found in CCO Claim No. [REDACTED]

Based on the evidence presented, I conclude the agency properly seeks to recover an overissuance of child care benefits in the amount of \$133.46 for the period of June 8, 2014 – July 16, 2014.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of child care benefits in the amount of \$133.46 for the period of June 8, 2014 – July 16, 2014.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of February, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 9, 2016.

Winnebago County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud